

USDC SDNY
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DATE FILED: 7/18/2017

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

-against-

JOSEPH PERCOCO,
a/k/a "Herb,"
ALAIN KALOYEROS,
a/k/a "Dr. K,"
PETER GALBRAITH KELLY, JR.,
a/k/a "Braith,"
STEVEN AIELLO,
JOSEPH GERARDI,
LOUIS CIMINELLI,
MICHAEL LAIPPLE, and
KEVIN SCHULER,

Defendants.
----- X

16-CR-776 (VEC)

ORDER

VALERIE CAPRONI, United States District Judge:

WHEREAS the Defendants have moved for severance in this case;

WHEREAS the Government has conceded that a discretionary severance pursuant to Rule 14 is appropriate, Dkts. 264, 276;

IT IS HEREBY ORDERED that, after due consideration, the Court concurs with the Government that a discretionary severance is appropriate and therefore the trial in this action will be SEVERED as follows: (1) Defendants Percoco, Aiello, Gerardi, and Kelly (hereafter the "January Trial Group") will be tried jointly on Counts 6 through 15,¹ with jury selection and trial beginning on **January 8, 2018**; and (2) Defendants Kaloyeros, Aiello, Gerardi, Ciminelli,

¹ The Government has advised that if the case is severed consistent with its proposal that it intends to seek a Superseding Indictment that would split the existing Count 15 into two separate false statement counts, one that should logically be tried with Counts 1 through 5 and one that should logically be tried with Counts 6 through 14. The Court will deal with any changed configuration of Count 15 if and when it occurs.

Laipple and Schuler (hereafter the “Second Trial Group”) will be tried jointly on Counts 1 through 5, with jury selection and trial beginning not sooner than **May 15, 2018**. On or before **July 31, 2017**, the Defendants in the Second Trial Group must report any existing firm trial commitments that they have from May 1, 2018, through September 30, 2018.

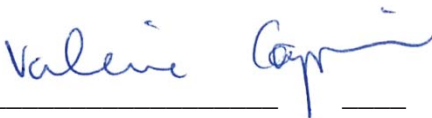
IT IS FURTHER ORDERED that the parties in the January Trial Group must meet and confer on a schedule for the production of witness lists, evidence lists and 3500 materials that is consistent with the schedule provided below that will govern the January Trial. The Government is encouraged to agree to early production of 3500 materials absent any reason to believe there is a risk to the fairness of the trial from doing so and in light of the volume of discovery materials.

1. On or before **October 13, 2017**, the Government must provide notice of any evidence it seeks to introduce at trial pursuant to Federal Rule of Evidence 404(b).
2. Motions *in limine* must be filed on or before **November 1, 2017**.
3. Responses to motions *in limine* must be filed on or before **December 1, 2017**.

There will be no reply briefs.

SO ORDERED.

Dated: July 18, 2017
New York, NY



VALERIE CAPRONI
United States District Judge